



# Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

111 N. Wabash Ave.  
Suite 1010  
Chicago, IL 60602  
(312) 450-6600  
[www.uniformlaws.org](http://www.uniformlaws.org)

## **Statement of Barry Hawkins, from the Uniform Law Commission, to the Joint Committee on Judiciary in Support of House Bill 5259 – The Connecticut Uniform Limited Liability Company Act**

Co-Chairs Coleman and Tong and Members of the Committee:

I am Barry Hawkins and I appear here today on behalf of the Uniform Law Commission (ULC). Connecticut has a long history of enacting uniform acts. Connecticut has enacted the Uniform Commercial Code, Uniform Partnership Act, Uniform Anatomical Gift Act, Uniform Transfers to Minors Act, among others. I am here today to express my support for another uniform act, House Bill 5259, the Connecticut Uniform Limited Liability Company Act. This bill is a comprehensive update to the State's existing limited liability company law, and is drawn substantially from the ULC's Uniform Limited Liability Company Act, also called "ULLCA."

ULLCA was first approved by the ULC in 1994, and has undergone multiple revisions since that time, most recently in 2013. Eighteen states have adopted some version of ULLCA to date. Four states, including Connecticut, have introduced legislation this year to enact the most updated form of ULLCA.

HB 5259 is the product of a multi-year revision and drafting effort by a Connecticut Bar Association committee comprised of business lawyers. This group scrutinized ULLCA, as drafted by the ULC, and made adjustments to ensure that the bill's content and structure are appropriate for Connecticut. The committee has worked with the ULC during the entire drafting process to confirm that the bill meets the goals and purposes of the uniform act. Some of the features of HB 5259 include: clarifying the purposes and limitations of LLC operating agreements, specifying default governance rules, and identifying fiduciary duties to the LLC, etc.

First, HB 5259 provides a centralized operating agreement provision, which lists the purposes of an operating agreement: (1) relations among the members and between the members and the LLC; (2) the rights and duties of the LLC's manager(s); (3) the activities and affairs of the LLC and the conduct of those activities and affairs; and (4) the means and conditions for amending the operating agreement. This new section also articulates which provisions of ULLCA may not be altered through the operating agreement.

Next, HB 5259 establishes clear default rules for the internal governance of an LLC. For instance, if the LLC's operating agreement is silent on the type of management structure, the LLC will be a member-managed company as a default. This provision also provides a consolidated list of matters requiring member consent, such as admitting a new member; deciding on matters outside the ordinary course of business; amending the operating agreement; etc.

Additionally, HB 5259 specifies that members and managers of the company owe the fiduciary duties of loyalty and care to the LLC. The bill also clarifies the contractual status of the duty of

good faith and fair dealing. The operating agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not "manifestly unreasonable." In addition, the operating agreement may alter the duty of care, but may not authorize conduct involving bad faith, willful or intentional misconduct, or knowing violation of law.

HB 5259 also changes the way in which a member or manager can bind an LLC based on his or her actions. HB 5259 uses agency law to determine if a member or manager can bind an LLC, rather than the person's status as a member or manager of the LLC.

Another update made by HB 5259 is with regard to charging orders, the exclusive remedy for a creditor of a member to obtain a member's financial rights to distributions from the LLC. The bill simplifies the rules governing charging orders and explains the ways in which a court may effectuate the collection of distributions, if necessary.

In summary, HB 5259 is a carefully crafted and comprehensive update to Connecticut's LLC law. Implementing the Connecticut Uniform Limited Liability Company Act through HB 5259 would provide necessary clarity and change to this complex area of the law.

Thank you very much for allowing me to testify, and I am happy to address any questions that you may have.